

Public Chapter 426

HOUSE BILL NO. 47

By Representative Fowlkes

Substituted for: Senate Bill No. 34

By Senators Kyle, Fowler

AN ACT to amend Tennessee Code Annotated, Titles 30, 31, 32, 35, 45 and 67, relative to probate.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 30, Chapter 1, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section 30-1-1____.

To apply for letters of administration or letters testamentary to administer the estate of a decedent, a verified petition containing the following information and documents shall be filed with the court:

1. The identity of the petitioner.
2. The decedent's name, age, if known, date and place of death, and residence at time of death.
3. In case of intestacy, the name, age, if known, mailing address and relationship of each heir at law of the decedent.
4. A statement that the decedent died intestate or the date of execution, if known, and the names of all attesting witnesses of the document or documents offered for probate.
5. The document or documents offered for probate, or a copy thereof, as an exhibit to the petition.
6. The names and relationships of the devisees and legatees and the city of residence of each if known, similar information for those who otherwise would be entitled to the decedent's property under the statutes of intestate succession, and the identification of any minor or other person under disability.
7. An estimate of the fair market value of the estate to be administered, unless bond is waived by the document offered for probate or is waived as authorized by statute.

8. If there is a document, whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law.

9. If there is a document, a statement that the petitioner is not aware of any instrument revoking the document being offered for probate, if such be the case, and that the petitioner believes that the document being offered for probate is the decedent's last will.

No notice of the probate proceeding shall be required except for probate in solemn form, which shall require due notice in the manner provided by law to all persons interested.

SECTION 2. Tennessee Code Annotated, Section 30-1-104, is amended by inserting in the first sentence between the words "sued," and "he" the following:

or for the purpose of being cited or otherwise notified by the court in which the decedent's estate is being administered,

SECTION 3. Tennessee Code Annotated, Section 30-2-101, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) The surviving spouse of an intestate decedent, or a spouse who elects against a decedent's will, is entitled to receive from the decedent's estate the following exempt property having a fair-market value (in excess of any indebtedness and other amounts secured by any security interests in such property) which does not exceed fifty thousand dollars (\$50,000.00):

(1) tangible personal property normally located in, or used in or about, the principal residence of the decedent and not used primarily in a trade or business or for investment purposes, and

(2) a motor vehicle or vehicles not used primarily in a trade or business. If there is no surviving spouse, the decedent's unmarried minor children are entitled as tenants in common only to such exempt property as described in subdivision (1) above. Rights to such exempt property are in addition to any benefit or share passing to the surviving spouse or unmarried minor children by intestate succession, elective share, homestead or year's support allowance.

SECTION 4. Tennessee Code Annotated, Section 30-2-103, is amended by deleting subsections (b) and (c) in their entirety and by substituting instead the following:

(b) A sum not exceeding ten thousand dollars (\$10,000.00) is authorized to be paid directly to the surviving spouse of a decedent, but if none, then to the surviving children of the decedent as tenants in common, as follows:

(1) By an employer any wages or other compensation owed a deceased employee at the time of the employee's death.

(2) By any other person owing, or holding funds for, a decedent if six (6) months have passed since the decedent's death without application having been made for the appointment of a personal representative. However, if such funds exceed ten thousand dollars (\$10,000.00), the excess shall be paid to the personal representative or as otherwise ordered by the court.

(3) All sums paid pursuant to this subsection shall be charged against the elective share, homestead allowance, and year's support allowance as applicable. If one entitled to receive payment hereunder is a minor, the sum shall be paid to the guardian or custodian for the minor's benefit.

SECTION 5. Tennessee Code Annotated, Section 30-2-306(c), is amended by deleting the word and figure "six (6)" and by substituting instead the word and figure "four (4)".

SECTION 6. Tennessee Code Annotated, Section 30-2-314(a), is amended by deleting the word and figure "six (6)" each time they appear and by substituting instead the word and figure "four (4)".

SECTION 7. Tennessee Code Annotated, Section 30-2-317(a)(4), is amended by deleting the word and figure "six (6)" and by substituting instead the word and figure "four (4)".

SECTION 8. Tennessee Code Annotated, Section 30-2-319, is amended by deleting the word and figure "seven (7)" and by substituting instead the word and figure "five (5)".

SECTION 9. Tennessee Code Annotated, Title 30, Chapter 2, Part 3, is amended by adding the following as a new section to be placed at the end of the Part:

Unless contrary to the provisions of the decedent's will, the personal representative of the estate is authorized, but not required, to advance or to pay as an expense of administration for a period of up to four months after the decedent's death the reasonable costs of routine upkeep of any real property passing under the will of the decedent or by intestate succession. Such authorized expenditures, which may be made in the personal representative's discretion, shall include those for utility services, day-to-day maintenance, lawn service, and insurance premiums but shall not include mortgage note payments, real estate taxes, major repairs or other extraordinary expenses. None of the foregoing limitations shall apply to any real property which is actually part of the probate estate being administered.

SECTION 10. Tennessee Code Annotated, Section 30-2-418(d), is amended by adding the following at the end of the subsection:

Such sale may be by public or private means and upon such terms and conditions as the court may direct or approve.

SECTION 11. Tennessee Code Annotated, Section 30-2-601, is amended by inserting in subdivision (b)(1) between the words "estate," and "has" the second time they appear in the subdivision the following:

unless waived pursuant to TCA Section 67-8-409(g),

SECTION 12. Tennessee Code Annotated, Section 30-4-102, is amended by deleting in the definition of small estate in subdivision (5) the words and figure "ten thousand dollars (\$10,000.00)" and by substituting instead the words and figure "twenty-five thousand dollars (\$25,000.00)".

SECTION 13. Tennessee Code Annotated, Section 30-4-103, is amended by deleting the word "and" at the end of subdivision (1)(C), by deleting the punctuation "." at

the end of subdivision (1)(D) and by substituting instead the punctuation and word “; and,” and by adding the following as new subdivision (1)(E):

(E) Whether or not the affiant elects to give notice to creditors in the manner required for regular administration, such election being authorized in the affiant's discretion. If such election is made, all the provisions of Sections 30-2-306 to 30-2-321 shall thereupon apply.

SECTION 14. Tennessee Code Annotated, Section 30-4-103(1), is further amended by adding the following after new subdivision (1)(E) at the end of the subdivision:

The form of the affidavit required by this section shall disclose that the affiant evidences by his signature that, subject to the penalty for perjury, the affidavit is not false or misleading and that the affiant is mindful of all duties imposed upon the affiant by this chapter.

No clerk or assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based upon information furnished by the affiant.

SECTION 15. Tennessee Code Annotated, Section 30-4-103, is further amended by inserting the language "for the benefit of those entitled" in the first sentence of subdivision (5) after the word "state" and by deleting in subdivision (6)(A) the word "If" and by substituting instead the language “ If the affiant did not elect to give notice to creditors in the manner prescribed for regular administration, and if”.

SECTION 16. Tennessee Code Annotated, Section 31-3-102, is amended by deleting the punctuation “.” at the end of the section and by adding the following: “or in Section 31-1-109.”. Tennessee Code Annotated, Title 31, Chapter 1, Part 1, is amended by adding the following as new Section 31-1-109:

Section 31-3-109.

(a) An individual who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of the homestead allowance, year's support allowance, exempt property, elective share and intestate succession, and the decedent's heirs are determined accordingly.

(b) A devisee who fails to survive the testator by one hundred twenty (120) hours is deemed to have predeceased the testator, unless the will of the decedent contains language dealing explicitly with simultaneous deaths or deaths in a common disaster or requiring that the devisee survive by a stated period of time in order to take under the will.

(c) If it is not established by clear and convincing evidence that an individual who would otherwise be an heir or devisee survived the decedent by one hundred twenty (120) hours, it is deemed that such individual failed to survive for the required period. This section is not to be applied if its application would result in property of any nature escheating to the state.

SECTION 17. Tennessee Code Annotated, Section 31-4-101, is amended by deleting the section in its entirety and by substituting instead the following:

Section 31-4-101.

(a) The surviving spouse of an intestate decedent, or a surviving spouse who elects against a decedent's will, has a right of election, unless limited by subsection (c), to take an elective-share amount equal to the value of the decedent's net estate as defined in subsection (b), determined by the length of time the surviving spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the surviving spouse were married to each other:	The elective-share percentage is:
less than 3 years	10% of the net estate
3 years but less than 6 years	20% of the net estate
6 years but less than 9 years	30% of the net estate
9 years or more	40% of the net estate

(b) The value of the net estate includes all of the decedent's real and personal property subject to disposition under the provisions of the decedent's will or the laws of intestate succession, reduced by the following: secured debts to the extent that secured creditors are entitled to realize on the applicable collateral, funeral and administration expenses, and award of exempt property, homestead allowance and year's support allowance.

(c) After the elective-share amount has been determined in accordance with the foregoing subsections (a) and (b), the amount payable to the surviving spouse by the estate shall be reduced by the value of all assets includable in the decedent's gross estate which were transferred, or deemed transferred, to the surviving spouse or which were for the benefit of the surviving spouse. For purposes hereof, the decedent's gross estate shall be determined by the court in the same manner as for inheritance tax purposes pursuant to T.C.A. §§67-8-301, et seq., except that the value of any life estate or trust for the lifetime benefit of the surviving spouse shall be actuarially determined.

(d) The elective-share amount payable to the surviving spouse is exempt from the claims of the unsecured creditors of the decedent's estate.

SECTION 18. Tennessee Code Annotated, Section 31-5-101, is amended by deleting the section in its entirety and by substituting instead the following:

Section 31-5-101. Advancements.

(a) If an individual dies intestate as to all or a portion of his estate, property the decedent gave during the decedent's lifetime to a child of the decedent is treated as an advancement against the child's intestate share only if (i) the decedent declared in a contemporaneous writing, or the child acknowledged in writing, that the gift is an advancement or (ii) the decedent's contemporaneous writing or the child's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of subsection (a), property advanced is valued as of the time the child came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the

decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

(d) The further provisions of this chapter concerning collation of property shall apply only if there has been an advancement as determined in accordance with subsection (a).

SECTION 19. Tennessee Code Annotated, Title 32, Chapter 2, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section 32-2-1____.

Any will when duly proven, whether of a resident or non-resident decedent, may be admitted to probate for the limited purpose of establishing a muniment of title to real estate, without the necessity of granting letters testamentary or otherwise proceeding with administration.

SECTION 20. Tennessee Code Annotated, Section 32-3-105, is amended by adding the following at the end of the section:

The foregoing disposition shall apply also to a revocable (living) trust which became irrevocable upon the death of its settlor or grantor. The surviving issue of a beneficiary who predeceased a settlor or grantor shall take the trust interest the beneficiary would have received had the beneficiary survived the settlor or grantor, unless the trust agreement provides otherwise.

SECTION 21. Tennessee Code Annotated, Section 35-50-107(b)(1), is amended by deleting the period at the end of the subdivision and by adding instead the following:

or in any other manner or matter involving an estate or trust being administered in this State.

SECTION 22. Tennessee Code Annotated, Sections 45-2-708, 45-3-514 and 45-4-405, are amended by deleting the words and figure "five thousand dollars (\$5,000.00)" and by substituting instead the words and figure "ten thousand dollars (\$10,000.00)".

SECTION 23. Tennessee Code Annotated, Section 67-8-409, is amended by adding the following as a new subsection (g):

(g) Any other provisions of this section notwithstanding, the following shall apply if the gross estate of a decedent does not exceed one hundred thousand dollars (\$100,000):

(1) If the decedent made no gifts during his lifetime in excess of the maximum single exemption allowable free of tax under Section 67-8-104, the court may waive the filing of an inheritance tax return upon a statement to such effect by the personal representative or person in possession executed under penalty of perjury. It shall not be necessary for the clerk to forward a copy of the statement to the Commissioner unless requested.

(2) If the decedent made one or more gifts in excess of the maximum exemption allowable free of tax under Section 67-8-104, the personal representative or person in possession may provide relevant information

concerning such gifts upon a short form provided by the Commissioner without the necessity of reporting otherwise, unless requested by the Commissioner.

SECTION 24. Tennessee Code Annotated, Section 67-8-420, is amended by adding the following at the end of the section:

However, the filing of such receipt or certificate shall not be necessary if filing of a return has been waived pursuant to Section 67-8-409(g).

SECTION 25. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 26. This act shall take effect January 1, 1998, and shall apply to all estates of decedents dying on or after that date and to all wills, other documents and proceedings related thereto.